

BEFORE THE DIVISION OF WATER RIGHTS

In The Matter Of: TROPIC & EAST FORK IRRIGATION COMPANY RESPONDENT	MEASURING DEVICE NOTICE SEAA No. 1403 DISTRIBUTION ACCOUNT: 102252 WATER RIGHTS: 61-2173, 61-2174
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:
 - (a) each location where water is diverted from a source; and*
 - (b) any other location required by the state engineer.**
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*
- (3) The state engineer shall approve the design of:
 - (a) the measuring device...**
- (5) An owner or manager of a reservoir shall construct and maintain a measuring device as directed by the state engineer to measure the inflow, storage content, and outflow from the reservoir.
 - (a) The state engineer shall approve the design and location of the measuring device.*
 - (b) The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.**
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:
 - (a) forbid the use of water until the user complies with the state engineer's requirement; and*
 - (b) commence enforcement proceedings authorized by Section 73-2-25.**

II. STATEMENT OF FACTS

1. The Respondent is the owner of water rights 61-2173 and 61-2174.
2. Water under these rights is distributed from Tropic Reservoir and from the East Fork of the Sevier River into the Tropic & East Fork Irrigation Company's pipeline at points in Section 28, T36S, R4W, SLB&M and Section 18, T37S, R4W, SLB&M.
3. A meter located in the Dave's Hollow area measures the diverted water.
4. Distribution Commissioner, Ray Owens, has affirmed that the Dave's Hollow meter is not functioning.
5. In order for the Commissioner to properly deliver water to the Respondent, the Dave's Hollow meter must be either replaced or repaired.

III. ACTIONS REQUIRED

1. The Respondents are hereby notified that **the Dave's Hollow meter must be either replaced or repaired.**
2. The Respondent's meter is to be perpetually maintained in good working order.
3. Should it be determined that the Dave's Hollow meter cannot be repaired and must be replaced, the Respondents are advised to consult with the Commissioner prior to purchasing a replacement meter to assure that the replacement meter will satisfy the requirements of this Notice.
4. **The required work must be completed and the Commissioner notified of said completion within 30 days of receipt of this Notice, being no later than September 30, 2010.**

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.

2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.

Equitable distribution of water from the Sevier River is a concern to the Division as I am sure it is to the Tropic & East Fork Irrigation Company. We appreciate and thank you for your cooperation in this matter. Should you have any questions about this Notice, please contact Sue Odekirk at (801) 538-7431 or Kirk Forbush, Southern Regional Engineer at (435) 896-4429.

Dated this 26th day of August, 2010.



Sue Odekirk, P.E.

Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 26th day of August, 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Tropic & East Fork Irrigation Company
c/o Ferrell Brinkerhoff
PO BOX 41
Tropic, UT 84776

Kelly K Horne

Kelly Horne
Division of Water Rights
Field Services Secretary

U.S. Postal Service™ Delivery Confirmation™ Receipt

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(Please Print Clearly)

Tropic & East Fork Irr Co.

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8/26/10

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(See Reverse)

PS Form 162, May 2002

CC: Kirk Forbush, Ivan Cowley, Ray Owens

1594 West North Temple, Suite 220, PO Box 146300, Salt Lake City, UT 84114-6300
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